

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WASEEM AKRAM and NADEEM AKRAM,

Plaintiffs,

-against-

KHURSHID MUGHAL,

Defendant.

ORDER

CV 17-2758 (AMD)(AYS)

SHIELDS, United States Magistrate Judge:

In an order dated September 8, 2022, this Court rendered a decision on a discovery motion (the “Discovery Order”). The Discovery Order denied Defendant’s request for the ultimate sanction of dismissal, but otherwise granted sanctions against Plaintiffs, Waseem Akram and Nadeem Akram. On September 22, 2022, Defendant moved for reconsideration of the Discovery Order. Thereafter, on October 11, 2022, this Court adhered to its decision as to the Discovery Order. (Docket Entry (“DE”) [80].)

On October, 6, 2022, prior to this Court’s decision adhering to the Discovery Order, Defendant noticed an appeal to the Second Circuit. (DE [79].) On October 18, 2022, the Second Circuit issued an order directing Defendant (Appellant therein) to file a response with that Court, by November 1, 2022, either setting forth the basis for that Court’s jurisdiction or withdrawing its appeal. (DE [81].)

On October 26, 2022, Defendant filed a letter motion with this Court seeking an order for this Court to “certify or amend” the Discovery Order and denial of reconsideration thereof to allow Plaintiff to appeal the Discovery Order directly to the Second Circuit. (DE [82].) On October 14, 2022, the Second Circuit ordered that the appeal before it be held in abeyance pending a decision on Defendant/Appellant’s motion for leave to appeal. (DE [84].)

As alluded to by the Second Circuit, the Discovery Order (to which Defendant never even objected to the assigned District Judge) is not directly appealable to the Second Circuit. The Court finds no grounds to render it so. Accordingly, upon consideration of Plaintiff's motion, the Court declines to order the relief sought. To be clear, the Court does not consider the Discovery Order to have "resolve[d] important questions completely separate from the merits." Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867 (1994). Nor does the Discovery Order "render such important questions effectively unreviewable" if an appeal is delayed until after a final trial. Id. To the extent that this Order denying Plaintiff's motion (which was addressed to this Court) should be issued as a Report and Recommendation, the Court hereby recommends that the assigned District Judge decline to certify the Discovery Order as immediately appealable to the Second Circuit on any ground whatsoever.

SO ORDERED.

Dated: November 16, 2022
Central Islip, New York

/s/ Anne Y. Shields
ANNE Y. SHIELDS
United States Magistrate Judge